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IN THE

Supreme Court of the United States

No. 78-1869

OCTOBER TERM, 1979

DON REHAHN, et al.,
Petitioners,
v.
GENERAL MOTORS CORPORATION
and LOCAL UNION 160, UAW,
Respondents.

PETITION FOR REHEARING AND RECONSIDERATION OF WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Now come the above petitioners and respectfully pray for a rehearing (reconsideration) of their petition for Writ of Certiorari. This Court denied their petition for such writ on October 1, 1979.

As introduction to this petition for rehearing (reconsideration), we desire to call the court's attention to the following excerpt from the affidavit of Don Rehahn, one of the petitioners, as follows:

> "Deponent further says, as he is informed and believes it to be true, that at a management meeting of Defendant General Motors, just prior to the ratification of the 1970 contract, one of the supervisors in the Template department of Defendant General Motors, said that General Motors was letting themselves in for a law suit if they agreed with Joe Malotke and his Committee to strip the Template makers of their seniority and make them "EITS" (Employee in Training) in various departments. *Charles Gaudet, personnel director of Defendant General Motors and who was Chairing the meeting, told the supervisor to shut his mouth. That 'if Joe Malotke and his Committee wanted "to screw their own men, let them do it." ' " (our emphasis)*

RULE OF LAW RE SUMMARY JUDGMENT IGNORED

Both the U.S. District Court and the U.S. Court of Appeals, 6th Circuit, ignored the rule of law that on motions for summary judgment the court must view all material disputed facts and the logical and reasonable inferences to be drawn therefrom in the light most favorable to the party opposing the motion; for the purpose of the motion the material allegations of the complaint must be taken as true and the complaint must be liberally construed in favor of the Plaintiff. FARBWERKE v. HOERSCHST, 589 F2d 795 (1979)

As the moving parties, the respondents had the burden of showing the absence of a genuine issue as to any material fact, and that they were entitled to judgment as a matter of law, *for the purpose of the rule is not to cut litigants off from the right to trial if they have issues to try.* (our emphasis)

HUGHES v AMERICAN JAWA, LTD, 529 F2d 21, 23 (1976)

JENKINS v McKEITHERN, 395 US 411, 23 L Ed 2d 404, 89 S Ct. 1843, 416 (1969)

BISHOP v WOOD, 426 US 341, 48 L Ed 2d 684, 96 S Ct 2074, 691 (1976)

ADICKES v KRESS & CO., 398 US 144, 26 L Ed 2d 142, 154 (1970)

POLLER v COLUMBIA BROADCASTING SYSTEM, 368 US 464, 7 L Ed 2d 458, 461-4 (1962)

THE COURT OF APPEALS' ERRONEOUS ASSERTIONS OF DISPUTED MATERIAL FACTS

The U.S. Court of Appeals for the 6th Circuit not only refused to be governed by the unbroken line of decisions governing motions for summary judgment, but added insult to injury in its opinion, by making alleged statements of fact that are palpably untrue: FOR INSTANCE:

FICTION: (COURT OF APPEALS ASSERTION) "The International Union, which is not made a party in this case, processed the arbitration."

FACT: This is not only flatly denied by Plaintiffs, but the fact is that the International Executive Board of the UAW sustained Plainitiffs' claim to enforce their seniority right as expressed in the Union-Management Agreement. (App. 16, A17)

FICTION: (COURT OF APPEALS ASSERTION) "The arbitrator decided in favor of the company. We find no basis for us to interfere with the decision of the arbitrator."

FACT: The Plaintiffs charged collusion between the defendants which made a farce of the so-called arbitration proceeding, and amounted to a fraud upon them, inasmuch as the Union-Management Agreement positively secured their seniority rights. Moreover, this protection was beyond the power of the Arbitrator to change.

FICTION: (COURT OF APPEALS ASSERTION) "Plaintiffs complain of the strategy adopted by the International Union at the Arbitration Hearing."

FACT: The fact is the International Union did not participate in the Arbitration Proceeding. The affidavits of Howard Casey, Edwin Januszkowski, Mitchell J. Foksa, Donald A. Wisniewski support Plaintiffs' allegations that the Arbitration Hearing was a farce and should never have been had.

FICTION: (COURT OF APPEALS ASSERTION) "We find no evidence of fraud or collusion by the union with the company."

FACT: Plaintiffs again reiterate that the International Union was not involved in the Arbitration matter; it had already held for the Plaintiffs, and supported their position, i.e. that they were entitled to the seniority secured to them by Par. 59 of the Union-Management

Agreement and sought to have the Defendant Local Union comply accordingly. The Defendants conspired to and did defeat this.

FICTION: (COURT OF APPEALS ASSERTION) "Relative to the claim by the Plaintiffs that the unions did not fairly represent them in connection with the handling of the grievance, the Plaintiffs did not exhaust reasonable internal union remedies which were provided for the UAW Constitution."

FACT: The Court made an erroneous conclusion of a material disputed question of fact. The affidavits of Howard Casey and Don Rehahn clearly show that all internal procedures were exhausted; the International Executive Board had decided in Plaintiffs' favor, and sought to have the Defendants abide by the terms of the Union-Management agreement. Plaintiffs contend that the Decision of this Court in the *Hines v Anchor Motor Freight, Inc., et al.*, 424 US 554, 47 L Ed 231, 96 S Ct 1048 (1976) also supports their claim.

FICTION: (COURT OF APPEALS ASSERTION) "Furthermore, all except six of the Plaintiffs approved an agreement between the Local and the Company, which resolved questions with respect to their classification seniority status."

FACT: The Plaintiffs at no time waived their rights to seniority under the Union-Management Agreement. Joseph Malotke, Plant Chairman of defendant Local 160 at a special meeting held May 16, 1974, stated that he had the "document" which they were required to

> sign; that all of them (Plaintiffs) would have to sign; "if one of you don't want to sign that would not be sufficient; that it would have to be 100% . . . . If one of you feel that you don't want to go, then we're not going. . . . . Then we can't make the agreement, because management just isn't going to buy it. It's only going to buy it if it is 100% agreement because they don't want to get back into another appeal procedure again. . . . ."

It is clearly apparent that the U.S. Court of Appeals, in its opinion, stated alleged facts in derogation of petitioner's claim which it had no right to assert as "findings of facts"; it is not even the function of the Court upon a Jury trial to make such findings. It is for the Jury to determine the facts.

17 to 31 YEARS' SENIORITY RIGHTS OF PETITIONERS

The 36 petitioners were protected in their seniority status by the Union-Management Agreement, Article 59, which states:

> "When changes in methods, products or policies would otherwise require the permanent laying off of employees, the seniority of the displaced employees shall become plant-wide and they shall be transferred out of the group in line with their seniority to work they are capable of doing, as comparable to the work they have been doing as may be available at the rate for the job to which they have been transferred."

The petitioners in 1974 had plant seniority running from 17 to 31 years. They were all members of the Defendant Local 160 and had been for many years. A short time before 1972 the employees of Defendant General Motors working at the Ternstedt Plant on the west side of Detroit were transferred to the Tech Center Plant of Defendant General Motors in the City of Warren, Michigan, who then became members of Defendant Local 160 (numbering several thousand). These newcomers from Ternstedt Plant replaced the Plaintiffs in their jobs and took over the local union. This condition may explain why Defendant Local 160 and Defendant General Motors brought about their joint action to disregard Art. 59 of the Union-Management Agreement. The petitioners, all journeymen with superior plant seniority, were layed off. The Defendant Local 160 acted through its plant chairman, Joe Malotke in collusion with Defendant General Motors, which resulted in the discharge of the 36 petitioners.

FAILURE OF LOCAL UNION TO FAIRLY REPRESENT PETITIONERS

Defendant Local 160 failed to fairly represent the petitioners by a contemptuous disregard of their seniority rights, and affirmatively victimized the petitioners by working in agreement with Defendant General Motors to bring about their discharge.

We again call attention to the affidavit of Don Rehahn (supra), when one of the supervisors in the Template department of Defendant General Motors said that General Motors was letting themselves in for a law suit if they agreed with Joe Malotke and his Committee to strip the Template makers of their seniority and

make them "EITS" in various departments. Charles Gaudet, personnel director of Defendant General Motors, and who was chairing the meeting, told the supervisor to shut his mouth. That if Joe Malotke and his committee wanted "to screw their own men, let them do it."

This collusion is also evidenced by the affidavits of three of the petitioners who, following a meeting of the Template makers on May 16, 1974, were told by plant chairman, Joe Malotke of Defendant Local 160, if he had been on the side of the Template makers they would not have lost the Umpire Decision.

The refusal of Defendant Local 160 through its officials, Joe Malotke and his committee, to fairly and properly represent petitioners is demonstrated by said Local Union disregarding the order of the International Executive Board of the UAW to implement its finding in favor of the petitioners and to enforce Art. 59, Labor-Management Agreement.

Another facet of the controversy which highlights the collusion between the respondents is contained in the affidavit of Don Rehahn. It would indicate that respondent General Motors was fully aware of its participation in supporting Defendant Local 160, and in the discharge of the petitioners. All of this violated and ignored the clear dictum of Art. 59 of the Labor-Management Agreement, (supra) which reads as follows:

> "When changes in methods, products or policies would otherwise require the permanent laying

> off of employees, the seniority of the displaced employees shall become plant-wide and they shall be transferred out of the group in line with their seniority to work they are capable of doing, as comparable to the work they have been doing as may be available at the rate for the job to which they have been transferred."

GONDECK v PAN AM. WORLD AIRWAYS,
382 US 25, 15 L Ed 2d 21, 86 S Ct 153

Petition for a rehearing was out of time but the Supreme Court granted relief and vacated the order denying certiorari, granted the petition for certiorari and reversed the judgment of the Court of Appeals.

> "We are now apprised, however, of intervening circumstances of substantial . . . effect, justifying application of the established doctrine that *'the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules.'* " (our emphasis)

HINES v ANCHOR MOTOR FREIGHT, INC.
424 US 554, 47 L Ed 2d 231, 238,
243, 246, 96 S Ct 1048 (1976)

This case involves some of the issues raised in the case at bar. It also serves to differentiate dicta from pertinent rulings and decisions of the several cases reviewed by the Court.

> "After reviewing the allegations and the record before it, the Court of Appeals concluded that there were sufficient facts from which bad faith and arbitrary conduct on the part of the Local

Union could be inferred by the trier of fact and that petitioners should have been afforded an opportunity to prove their charges. To this extent the judgment of the District Court was reversed."

This supports the position of the petitioners in the case at bar, and again:

"Even though under Vaca the employer may not insist on exhaustion of grievance procedures when the union has breached its representation duty, it is urged that when the procedures have been followed and a decision favorable to the employer announced, the employer must be protected from relitigation by the express contractual provision declaring a decision to be final and binding. *We disagree. The union's breach of duty relieves the employee of an express or implied requirement that disputes be settled through contractual grievance procedures; if it seriously undermines the integrity of the arbitral process the union's breach also removes the bar of the finality provision of the contract.*" (our emphasis)

"Petitioners, if they prove an erroneous discharge and the Union's breach of duty tainting the decision of the joint committee, are entitled to an appropriate remedy against the employer as well as the Union. It was error to affirm the District Court's final dismissal of petitioners' action against Anchor. To this extent the judgment of the Court of Appeals is reversed."

PETITIONERS REDUCED TO "EMPLOYEE IN TRAINING STATUS"

All of the Plaintiffs, having had plant seniority from 17 to 31 years, should have been continuously employed from 1970 up to and including now as well as in the future. Respondent, General Motors, working in collusion with Defendant Local 160 did bring about a claimed re-classification of the Plaintiffs, allegedly abolishing their work classification (supra), and claimed their retention unnecessary. This concerted action of the respondents was perpetrated with fraudulent purpose inasmuch as the work done by the Plaintiffs has never been abandoned or discontinued.

It is difficult to understand, and certainly to defend, the decision of the District Court and the affirmance by the Court of Appeals, 6th Circuit, in disregarding and refusing to follow the rule of law, upheld in the compelling language of this Court in the cases heretofore cited in the Petition for Certiorari.

By the erroneous decisions of the U.S. District Court and the U.S. Court of Appeals for the 6th Circuit, the petitioners (Plaintiffs) have been deprived of their right to full employment for 2 years. They have lost substantial compensation for this period of time; they have been stripped of the plant seniority with a loss of fringe benefits, and have been put back to work as beginners having to start seniority all over again, a status described as "EITS" — "Employee in Training."

Verily, as Defendant General Motors so accurately and obscenely described petitioners (Plaintiffs) treatment, they have been "screwed" and seemingly with no redress.

CONCLUSION

Petitioners have been denied the equal protection of the law and have been deprived of their property without due process of law, in violation of the 14th Amendment to the Constitution of the U.S.

Petitioners prayerfully hope that the Supreme Court of the U.S. will afford petitioners their opportunity for their day in court to obtain a redress of their indefensible and shocking grievance.

Respectfully submitted,

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